

FILED

08 MAY 16 PM 2:32

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

08 CV 0877 BEN LSP

DEPUTY

1 TANYA M. SCHIERLING [SBN 206984]  
tschierling@swslaw.com  
2 EDWARD J. MCINTYRE [SBN 80402]  
emcintyre@swslaw.com  
3 SOLOMON WARD SEIDENWURM & SMITH, LLP  
401 B Street, Suite 1200  
4 San Diego, California 92101  
Telephone: (619) 231-0303  
5 Facsimile: (619) 231-4755  
6 Attorneys for Taylor's Industrial Services, LLC a/k/a  
HPM Division  
7  
8

9  
10 UNITED STATES DISTRICT COURT  
11  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 WELLTEC MACHINERY USA, INC., a  
California corporation as assignee of  
14 WELLTEC MACHINERY LIMITED a Hong  
Kong registered Company,

15 Plaintiff,

16 v.

17 TAYLOR'S INDUSTRIAL SERVICES, LLC  
a/k/a HPM DIVISION, and DOES 1  
18 THROUGH 100,

19 Defendants.  
20  
21  
22  
23  
24  
25  
26  
27  
28

CASE NO.

NOTICE OF REMOVAL OF ACTION TO  
FEDERAL COURT PURSUANT TO 9 U.S.C.  
§ 205 AND 28 U.S.C. § 1441 (FEDERAL  
QUESTION)

Complaint Filed: January 28, 2008

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES AND THEIR  
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT, pursuant to 9 U.S.C. § 205 and 28 U.S.C. § 1441,  
4 defendant TAYLOR'S INDUSTRIAL SERVICES, LLC ("Defendant") removes to this Court the  
5 state court action described below, which is an action that relates to an arbitration  
6 agreement falling under the Convention on the Recognition and Enforcement of Foreign  
7 Arbitral Awards of June 10, 1958 (the "Convention").

8 Specifically, as described in greater detail below, plaintiff alleges that Defendant is a  
9 party to and committed breaches of that certain distributorship agreement ("Distributorship  
10 Agreement") attached as Exhibit "A" to plaintiff's complaint, which agreement requires  
11 arbitration of any disputes in Hong Kong before the International Chamber of Commerce in  
12 accordance with the Conciliation and Arbitration Rules.

13 **I. PROCEDURAL STATUS OF PENDING STATE COURT ACTION**

14 1. On January 28, 2008, plaintiff filed a complaint in the Superior Court of the  
15 State of California in and for the (City and) County of San Diego, for an action entitled  
16 *Welltec Machinery USA, Inc., a California corporation as assignee of Welltec Machinery*  
17 *Limited, a Hong Kong registered Company, Plaintiff v. Taylor's Industrial Services, LLC a/k/a*  
18 *HPM Division, and DOES 1 through 100, Defendants; as case number 37-2008-00076792-*  
19 *CU-BC-CTL (the "Complaint"). A copy of the Complaint is attached here as Exhibit "A."*

20 2. A copy of all other process, pleadings, orders and other filings served on  
21 Defendant is attached here as Exhibit "B."

22 3. As of the date of this Notice of Removal, no defendant has responded to the  
23 Complaint or otherwise appeared in the state court action.

24 4. There has been no trial on the merits in the state court action and therefore,  
25 this Notice of Removal is timely according to 9 U.S.C. § 205.

26 **II. JURISDICTION AND VENUE**

27 5. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and

1 9 U.S.C. §§ 203 and 205, in that this civil action arises under federal law because it relates  
 2 to an arbitration agreement falling under the Convention:

3       ***An action or proceeding falling under the Convention shall be  
           deemed to arise under the laws and treaties of the United  
           States.*** The district courts of the United States (including the  
 4        courts enumerated in section 460 of title 28) shall have original  
 5        jurisdiction over such an action or proceeding, regardless of the  
 6        amount in controversy.

7 9 U.S.C. § 203 (emphasis added).

8       6. Because this action is pending in the Superior Court of California in the  
 9       County of San Diego, venue in the United States District Court for the Southern District of  
 10      California, is proper pursuant to the provisions of 9 U.S.C. § 205 and 28 U.S.C. § 1446(a).

### 11           III. GROUNDS FOR REMOVAL

12       7. Removal is appropriate under 9 U.S.C. § 205 when the action relates to an  
 13      arbitration agreement falling under the Convention:

14       Where the subject matter of an action or proceeding pending in  
 15      a State Court ***relates to an arbitration agreement or award  
           falling under the Convention, the defendant or the defendants  
           may, at any time before the trial thereof, remove such action***  
 16      or proceeding to the district court of the United States for the  
 17      district and division embracing the place where the action or  
 18      proceeding is pending. The procedure for removal of causes  
 19      otherwise provided by law shall apply, except that the ground  
 20      for removal provided in this section need not appear on the face  
 21      of the complaint but may be shown in the petition for removal.  
 22      For the purposes of Chapter 1 of this title any action or  
 23      proceeding removed under this section shall be deemed to have  
 24      been brought in the district court to which it is removed.

25 9 U.S.C. § 205 (emphasis added).

26       8. Section 202 explains that an arbitration agreement falls under the Convention  
 27      if it arises out of a relationship that is not wholly domestic:

28       ***An arbitration agreement or arbitral award arising out of a  
           legal relationship, whether contractual or not, which is  
           considered as commercial, including a transaction, contract or  
           agreement described in [9 U.S.C. § 2], falls under the  
           Convention.*** An agreement or award arising out of such a  
 29      relationship which is entirely between citizens of the United  
 30      States shall be deemed not to fall under the Convention unless  
 31      that relationship involves property located abroad, envisages  
 32      performance or enforcement abroad, or has some other

1 reasonable relation with one or more foreign states. For the  
 2 purpose of this section a corporation is a citizen of the United  
 3 States if it is incorporated or has its principal place of business in  
 4 the United States.

5 9 U.S.C. § 202 (emphasis added).

6 9. Here, the contract upon which plaintiff bases its Complaint is between  
 7 Defendant, an Illinois company (see Complaint, ¶ 2), on the one hand, and plaintiff Welltec  
 8 Machine Limited, a Hong Kong company, ("Welltec Hong Kong"), on the other hand. See  
 9 Complaint, ¶ 9 (Defendant and Welltec Hong Kong entered into a written distributorship  
 agreement (Exhibit A to the Complaint) on or about August 1, 2002).

10 10. All of plaintiff's claims against defendants arise out of and relate to the  
 11 Distributorship Agreement, which requires arbitration in Hong Kong before the International  
 12 Chamber of Commerce of any dispute arising out of that agreement. See Complaint, Exhibit  
 13 "A."

14 11. In short, plaintiff's claims relate to an arbitration agreement—contained in the  
 15 Distributorship Agreement—that falls under the Convention because the Distributorship  
 16 Agreement has a substantial foreign nexus and bears a reasonable relationship to one or  
 17 more foreign states. Welltec Hong Kong is a foreign citizen. Thus, the arbitration  
 18 agreements fall under the Convention, making removal of this action proper under 9 U.S.C.  
 19 § 205.

### 20 III. COMPLIANCE WITH STATUTORY REQUIREMENTS

21 12. As required by 9 U.S.C. § 205 and 28 U.S.C. § 1446(a), copies of process,  
 22 pleadings, orders and other filings served upon Defendant are attached here as Exhibit A-B.

23 13. As required by 9 U.S.C. § 205 and 28 U.S.C. § 1446(d), Defendant will  
 24 promptly provide this written Notice of Removal to plaintiff through its attorneys of record  
 25 and will file a copy with the Clerk of the Superior Court of San Diego County, California.

### 26 IV. RESERVATION OF RIGHTS AND DEFENSES

27 14. By filing this Notice of Removal, Defendant does not consent to jurisdiction or  
 28 venue in this judicial district or waive its rights to demand arbitration or otherwise assert any

1 defense that may be available to it.

2

3 DATED: May 16, 2008

SOLOMON WARD SEIDENWURM & SMITH, LLP

4

5 By:



6 TANYA M. SCHIERLING

7 EDWARD J. MCINTYRE

8 Attorneys for Taylor's Industrial Services, LLC  
9 a/k/a HPM Division

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



1 ANTON N. HANDAL, ESQ (SBN: 113812)  
 2 PAMELA C. CHALK, ESQ. (SBN # 216411  
 3 GABRIEL G. HEDRICK, ESQ. (SBN # 220649)  
 4 **HANDAL & ASSOCIATES**  
 5 1200 THIRD AVE, SUITE 1321  
 SAN DIEGO, CA 92101  
 TEL. 619.544.6400  
 FAX. 619.696.0323

6 Attorney for Plaintiff.

7

8

9 SUPERIOR COURT OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SAN DIEGO, CIVIL DIVISION

11 WELLTEC MACHINERY USA, INC., a ) Case No.: 37-2008-00076792-CU-BC-CTL  
 12 California Corporation as assignee of )  
 13 WELLTEC MACHINERY LIMITED a Hong Kong registered Company. ) COMPLAINT FOR:  
 14 Plaintiff, ) 1) BREACH OF CONTRACT;  
 15 vs. ) 2) BEACH OF THE COVENANT;  
 16 TAYLOR'S INDUSTRIAL SERVICES, LLC ) 3) CONSTRUCTIVE FRAUD;  
 17 a/k/a HPM DIVISION, and DOES 1 through 100. ) 4) INTENTIONAL  
 18 Defendants ) 5) FALSE PROMISE;  
 6) ACCOUNT STATED; and  
 7) OPEN BOOK ACCOUNT

19

20 COMES NOW PLAINTIFF, WELLTEC MACHINERY USA, INC., and files the  
 21 instant action against TAYLOR'S INDUSTRIAL SERVICES, LLC a/k/a HPM DIVISION  
 22 and DOES 1 through 100 inclusive as follows:

23 GENERAL ALLEGATIONS

24 1. Plaintiff, WELLTEC MACHINERY USA, INC. (hereafter "WELLTEC  
 25 USA) is a California Corporation with offices in San Diego, California. WELLTEC USA is a  
 26 wholly owned subsidiary of WELLTEC MACHINERY LIMITED a Hong Kong registered  
 27 company. Both WELLTECH USA and WELLTEC MACHINERY LIMITED (hereafter  
 28 "WELLTEC HK") are actively engaged in the business of manufacturing and selling heavy  
 plastic injection molding machinery for sale to U.S. and California based customers.

1 WELLTEC USA is the assignee of WELLTEC HK's claims against Defendants and brings the  
2 instant action in its own behalf.

3       2. Defendant, TAYLOR'S INDUSTRIAL SERVICES, LLC a/k/a HPM  
4 DIVISION, (hereafter "TAYLOR'S") is an Illinois Limited Liability Company duly qualified  
5 to and is actively doing business in the State of California. TAYLOR'S business includes  
6 trucking and the sale of heavy machinery including plastic injection molding machinery.  
7 TAYLOR'S frequently does business within the jurisdiction of this court and indeed, many of  
8 the transactions underlying this complaint took place in California including but not limited to  
9 the delivery and pick-up of the commercial goods in question.

10     3. At the present time, Plaintiff does not know the true names and capacities of  
11 the defendants sued herein as Does 1 through 100, and therefore sue these defendants by such  
12 fictitious names. Plaintiff will seek leave of court to amend this complaint to aver their true  
13 names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges,  
14 that each of the Defendants, including the fictitiously named defendants was the duly  
15 authorized agent of each of the other defendants, and in doing the things herein mentioned,  
16 defendants, and each of them were acting within the course and scope of their agency and  
17 employment and that all acts, omissions, breaches, defaults, negligence, or other misconducts  
18 as alleged in this Complaint were committed with knowledge, permission and consent of the  
19 other Defendants, and in doing the things herein mentioned, Defendants, and each of them,  
20 were acting with the course and scope of their agency and employment and that all acts,  
21 omissions, breaches, defaults, negligence or other misconduct as alleged in this Complaint were  
22 committed with knowledge, permission, and consent of the other defendants or were  
23 subsequently ratified by them, including fictitiously named defendants and each of them.

24     4. Upon information and belief, each fictitiously named defendant is in some  
25 manner responsible for the occurrences alleged in this complaint and proximately caused the  
26 damages as alleged herein.

27     5. Upon information and belief, at all times herein mentioned, each defendant  
28 acted individually and/or as the successor, agent, co-conspirator, aider, abettor, joint venturer,

1 alter ego, third-party beneficiary, employee, officer, director or representative of the other  
2 defendants and, in doing the things hereinafter alleged, acted within the course and scope of  
3 such agency, employment or conspiracy and with the consent, permission and authorization of  
4 each of the remaining defendants. Upon information and belief, all actions of each defendant  
5 as alleged in the claims for relief stated herein were ratified and approved by every other  
6 defendant or their officers, directors or managing agents. Defendants' actions stemmed from an  
7 evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights. Plaintiffs are  
8 thus entitled to recover punitive damages from defendants.

9       6. Whenever and wherever reference is made in this Complaint to any act or  
10 failure to act by a Defendant or Defendants, such allegations and reference shall also be  
11 deemed to mean the acts and/or failures to act by each Defendant acting individually, jointly,  
12 and severally.

13       7. All of the acts and conduct herein below described of each and every  
14 Defendant was duly authorized, ordered, and directed by the respective and collective  
15 Defendant employers, and the officers and management level employees of said government  
16 employer. In addition thereto, said employers participated in the aforementioned acts and  
17 conduct of its said employees, agents, and representatives and each of them; and upon  
18 completion of the aforesaid acts and conduct of said employees, agents and representatives, the  
19 Defendants respectively and collectively, ratified, accepted the benefits of, condoned, lauded,  
20 acquiesced, authorized and otherwise approved of each and all of the said acts and conduct of  
21 the aforementioned corporate employees, agents and representatives.

22       8. Plaintiff also seeks the issuance of a Temporary Restraining Order to prevent  
23 the Defendants, and their agents from directly or indirectly collecting any of its outstanding  
24 accounts receivable pending the litigation.

#### 25                   FACTS COMMON TO ALL COUNTS

26       9. In or about August of 2002, TAYLOR'S approached WELLTEC HK for the  
27 purpose of sourcing heavy plastic injection molding equipment (hereafter "machine") for sale  
28 to its customers in Canada. As a result, TAYLOR'S and WELLTEC HK entered into a SOLE

1 DISTRIBUTORSHIP AGREEMENT (hereafter "Distributorship Agreement") effective as of  
 2 the 1<sup>st</sup> day of August, 2002. A true and correct copy of the Distributorship Agreement is  
 3 attached hereto as Exhibit "A". The Distribution Agreement granted TAYLOR'S an exclusive  
 4 distributorship within the Canadian territory only.

5       10. Under the terms of the Distributorship Agreement, WELLTEC HK agreed to  
 6 sell machinery products to TAYLOR'S under one of two potential financing schemes. Under  
 7 the terms of the Distributorship Agreement, TAYLOR'S had the option of posting an  
 8 irrevocable Letter of Credit (hereafter "LOC") at sight<sup>1</sup> with every issued Purchase Order  
 9 (hereafter "PO"). Alternatively, TAYLOR'S had the option of depositing twenty (20) percent  
 10 of the value of a PO, in cash, upon issuance of the PO with the balance of the PO value secured  
 11 by an LOC four (4) weeks prior to shipment of the machinery.

12       11. For a period of time, business between TAYLOR'S and WELLTEC HK  
 13 proceeded according to the terms of their Distributorship Agreement. TAYLOR'S would issue  
 14 PO's under contract numbers and WELLTEC HK would invoice TAYLOR according to the  
 15 terms of the Distributorship Agreement.

16       12. In or about the summer of 2002, TAYLOR'S issued a PO for a number of  
 17 machines for a total invoice value of \$108,600. TAYLOR'S made the requisite 20% deposits.  
 18 TAYLOR'S, however, failed to post the required LOC for the balance within four weeks of  
 19 shipment. TAYLOR'S represented to WELLTEC HK, that their failure was merely and over  
 20 sight and the machines were shipped anyway. TAYLOR'S received the machines but failed or  
 21 refused to make payment of the balance on WELLTEC HK's invoice in the amount of \$86,800.  
 22 \$86,800 remains outstanding on this invoice since September 2003.

23       13. In summer 2003, TAYLOR'S placed another order for a machine under PO  
 24 no. PX/03058. At the time of placing the order, TAYLOR'S advised WELLTEC HK of  
 25 financial difficulties it was having. TAYLOR'S represented to WELLTEC HK that if it could  
 26 and would make a deposit of seventy (70) percent of the invoice price of the machine prior to  
 27 shipment and would pay the balance due after delivery and inspection of the machine in

---

28  
 1 A letter of credit which is payable immediately upon presentation of the appropriate paperwork.

1 California. WELLTEC HK accepted TAYLOR'S representation and promises and issued an  
2 invoice (no. PEA311006) against the PO and TAYLOR'S made the deposit of seventy percent  
3 of the invoice leaving a balance due of USD \$39,210.

4 14. The subject machine was delivered to Long Beach, California where it was  
5 inspected and accepted by TAYLOR'S in or about February of 2004. TAYLOR'S, however,  
6 failed to make its promised payment on the balance of the invoice, notwithstanding the fact that  
7 it inspected and accepted delivery of the machine. As of the date of this filing, TAYLOR'S  
8 has not identified or advise of any defects in the subject machine and has refused and continues  
9 to refuse to make payment of the balance due on the subject invoice.

10 15. In or about March 2004, TAYLOR'S made another request to acquire a  
11 machine from WELLTEC HK for exhibition purposes. Once again, TAYLOR'S promised to  
12 make payment on the same terms described above (70% deposit balance due after delivery). In  
13 spring of 2004, WELLTEC HK shipped a machine to Manzanillo, Mexico so that TAYLOR'S  
14 could exhibit it for potential Latin American buyers.

15 16. In accord with their agreement, WELLTEC HK issued invoice number  
16 ("no.") PEA4030011 against which TAYLOR'S made a 70% cash payment leaving a balance  
17 due of \$6,750. Notwithstanding TAYLOR'S receipt of the machine, it has failed and continues  
18 to refuse to pay the balance of said invoice since July 2004.

19 17. Taking advantage of the new payment arrangements, TAYLOR' issued  
20 another PO for three machines in March 2004 for an aggregate value of \$129,780. TAYLOR'S  
21 made the 70% deposit leaving a balance of \$45,994.52. The machines were delivered to  
22 TAYLOR'S at in or about June 2004 in Long Beach, California. TAYLOR'S accepted  
23 delivery of the machines yet failed and continues to refuse to make payment leaving an  
24 outstanding balance of \$45,994.52 from June 2004.

25 18. In or about March 2004, WELLTEC HK agreed to send another machine to  
26 TAYLOR'S in exchange for a machine previously delivered which was represented to be  
27 defective. Terms of the invoice provided that the invoice, no. PEA4040011 would be fully  
28 credited and marked paid upon the return of the allegedly defective machine. TAYLOR'S

1 received and accepted the new machine in or about July 2004 but has failed to return the  
2 defective machine or make payment on the invoice in the amount of \$126,700.

3       19.       On or about May 2004, TAYLOR'S placed an order for two (2) machines –  
4 PO PX/04011 to be delivered to Long Beach, California. The terms for payment were 70%  
5 down and 30% within a week after delivery to a customer. TAYLOR'S represented to Wilson  
6 Wong of WELLTEC HK, that if they shipped the machines to TAYLOR'S customer direct,  
7 TAYLOR'S would pay the invoice within one week of the customer's inspection and  
8 acceptance of the machines. The machines were shipped and accepted by TAYLOR'S  
9 customer. TAYLOR'S, however, failed and continues to refuse to make payment to  
10 WELLTEC HK for the machines in the invoiced amount of \$174,800 as of August 2004.

11       20.       In the final transaction between the parties, WELLTEC HK, sold two (2)  
12 machines to TAYLOR'S pursuant to an invoice issued in May 2004 in the aggregate total  
13 amount of \$249,720. TAYLOR'S paid \$174,720 on said invoice leaving a balance of \$74,880  
14 due on the invoice as of September 2004.

15       21.       The total balance due under the unpaid invoices described above equals  
16 \$548,384 plus interest.

17       22.       WELLTEC HK addressed the late payment situation with TAYLOR'S on  
18 July 28, 2005 in a meeting involving Billie Chik and Wilson Wong for WELLTEC HK and  
19 John Rexford, Chris Filos and Dean Francis for TAYLOR'S. At the meeting, TAYLOR'S,  
20 through its authorized personnel, made representations and promises to pay the outstanding  
21 balance owed to WELLTEC HK. In exchange, TAYLOR'S sought certain credits which  
22 WELLTEC HK agreed to provide on condition that full payment would be made. TAYLOR'S  
23 agreed to WELLTEC HK's terms and committed to make payments to WELLTEC HK to  
24 reduce its outstanding obligations.

25       23.       TAYLOR'S failed to meet any of the payment commitments it made at the  
26 meeting in July 2005.

27       24.       The parties continued to discuss payment arrangements and agreed to meet  
28 during the NPE 2006 show in Chicago, IL on June 21, 2006. The meeting was attended by

1 Wilson Wong, Freeman Tang, and Raymond Li on behalf of WELLTEC HK and by Chris  
2 Filos, Gerry Sposato and Tom Golden on behalf of TAYLOR'S. During the meeting, the  
3 parties discussed a number issues including TAYLOR'S outstanding account balance. Once  
4 again, TAYLOR'S, through its authorized representatives made representations and promises  
5 to pay its outstanding obligations to WELLTEC HK. In spite of these representations and  
6 promises, TAYLOR'S has failed and/or refused to meet its obligations to WELLTEC HK.

7 25. TAYLOR's repeatedly represented to WELLTEC HK that it would  
8 voluntarily redress and/or pay all outstanding invoice claims with WELLTEC HK.  
9 Specifically, TAYLOR's promised on or about July 21, 2005 that it would pay WELLTEC HK  
10 the total sum of all outstanding invoices owed or \$548,384 plus interest for outstanding  
11 invoices from the years 2002, 2003, 2004 and/or 2005. TAYLOR's promised to pay that sum  
12 forthwith.

13 26. TAYLOR's promises and assurances lead WELLTEC HK to reasonably  
14 believe that the matter was settled and that there was no need to pursue litigation in regards to  
15 the matter. However, no payment was made as of the date of the filing of this Complaint.  
16 TAYLOR's refrained from filing a complaint because of TAYLOR's continued assurances that  
17 payment was forthcoming. WELLTEC HK relied on TAYLOR's promises to pay because of  
18 their ongoing business relationship with one another.

19 27. In or about March of 2007, WELLTEC HK discovered that TAYLOR's  
20 never had any intention of paying any settlement sum but, instead, intended to induce  
21 WELLTEC HK not to commence an action and, thus, to prevent WELLTEC HK not to  
22 commence an action within any and all applicable periods of limitation.

23 28. WELLTEC MACHINERY USA, INC. is a wholly owned subsidiary of  
24 WELLTEC MACHINERY LIMITED. In March 2007, WELLTEC MACHINERY LIMITED  
25 assigned all right, title and interest in and to the invoices, together with any other obligations  
26 owing by TAYLOR'S, to WELLTEC USA, for the purpose of pursuing payment and or  
27 collection thereof. As such WELLTEC USA brings this action on its own behalf as the holder  
28 and owner of all of WELLTEC HK's rights against TAYLOR'S.

1                   FIRST CAUSE OF ACTION

2                   BREACH OF CONTRACT AGAINST ALL DEFENDANTS

3         29. Plaintiff repeats and re-alleges paragraphs 1-28, inclusive as though fully set  
4 forth herein.

5         30. WELLTEC HK entered into oral and/or written Agreements with  
6 Defendants and each of them, as more fully described above, for the purchase sale and  
7 distribution of heavy equipment machinery typically used in connection with plastic injection  
8 molding.

9         31. WELLTEC HK has performed all conditions, covenants and promises  
10 required on its part to be performed in accordance with the terms and conditions of the  
11 Agreements.

12         32. In failing to pay for the machinery purchases described above, Defendants  
13 and each of them have breached their agreements with WELLTEC HK by failing and/or  
14 refusing to pay for commercial goods received by them in the ordinary course of business.  
15 Defendants, by and through their conduct have caused Plaintiff to suffer damages in an amount  
16 to be proven at the time of trial but no less than \$548,384.

17                   SECOND CAUSE OF ACTION:

18                   BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

19         33. Plaintiff repeats and re-alleges paragraphs 1-28, inclusive as though fully set  
20 forth herein.

21         34. WELLTEC HK entered into one or more oral and/or written Agreement(s)  
22 with the Defendants as alleged herein.

23         35. WELLTEC HK has performed all the duties and conditions of the  
24 Agreement(s) with the Defendants.

25         36. The Defendants and each of them knew that the WELLTEC HK fulfilled all  
26 its duties and conditions under the oral and/or written contract(s) with the Defendants.

27         37. The Defendants and each of them breached the implied covenant of good  
28 faith and fair dealing by conspiring, aiding and abetting in the taking of money and property

1 under false pretenses.

2       38.       As the proximate result of the acts alleged above, the Plaintiff has and will  
3 suffer damages in an amount according to proof at trial but no less than \$548,384.

4                   THIRD CAUSE OF ACTION:

5                   CONSTRUCTIVE FRAUD

6       39.       Plaintiff repeats and re-alleges paragraphs 1-28, inclusive as though fully set  
7 forth herein.

8       40.       By virtue of the relationship that existed between the Defendants and the  
9 WELLTEC HK, and by virtue of the WELLTEC HK having placed confidence in the fidelity  
10 and integrity of the Defendants, WELLTEC HK entrusted Defendants with commercial goods  
11 and merchandise.

12      41.       Despite having voluntarily accepted the trust and confidence of WELLTEC  
13 HK, the Defendants abused their position by taking goods on account and willfully refusing  
14 and failing to make payment for them in violation of the agreements existing between them.

15      42.       The Defendants held themselves out to the public and to WELLTEC HK as  
16 reputable, experienced distributors. WELLTEC HK reasonably relied on the Defendants to be  
17 honest and of high integrity in view of their long relationship and the Defendants'  
18 representations.

19      43.       The Defendants intentionally failed to honor their promises and commitment  
20 to WELLTEC HK as herein alleged with the intent to deceive and defraud WELLTEC HK. As  
21 a result of the acts of the Defendants, WELLTEC HK has been damaged in an amount  
22 according to proof at trial but no less than \$548,384.

23      44.       In doing the acts herein alleged, the Defendants acted with oppression, fraud,  
24 breach of trust and malice and WELLTEC HK is entitled to exemplary damages according to  
25 proof at trial.

26      ///

27      ///

28      ///

1                   **FOURTH CAUSE OF ACTION:**

2                   **FRAUD AND DECEIT: INTENTIONAL MISREPRESENTATION**  
3                   **OR SUPPRESSION OF MATERIAL FACT**

4         45. Plaintiff repeats and re-alleges paragraphs 1-28, inclusive as though fully set  
5 forth herein.

6         46. At all times alleged herein, Defendants and each of them held themselves  
7 out to the public and to WELLTEC HK as being competent, experienced distributors.

8         47. WELLTEC HK agreed to deliver goods and merchandise to the Defendants  
9 on credit terms based upon specific representations made by Defendants concerning payment.  
10 Specifically, Defendants represented to WELLTEC HK that they would pay for machines after  
11 they were delivered and would also cause machines to be returned after delivery by WELLTEC  
12 HK of replacement machines, as more fully described above. The representations of the  
13 Defendants were in fact false.

14         48. When the Defendants made these representations, they knew them to be  
15 false and made these representations with the intention to deceive and defraud WELLTEC HK  
16 so as to induce its reliance on thereon. WELLTEC HK, in fact reasonably relied on Defendants  
17 promises and assurances in the manner herein alleged and was ignorant of the falsity of  
18 Defendants' representations.

19         49. Had the WELLTEC HK known the actual facts, it would not have taken  
20 such action. Reliance on the Defendants' representations was justified because the Defendants  
21 and each of them held themselves out to the public and to WELLTEC HK as being honorable,  
22 competent, experienced sales agents and distributors with significant financial resources.

23         50. As a direct and proximate result of the Defendants' conduct, Plaintiff has  
24 been deprived of over \$548,384 in invoice payments it was reasonably entitled to receive.

25         51. The aforementioned conduct of the Defendants amounted to an intentional  
26 misrepresentation, deceit, or concealment of material facts known to the Defendants with the  
27 intention on the part of the Defendants of thereby depriving the Plaintiff of property or legal  
28 rights or otherwise causing injury, and was despicable conduct that subjected the Plaintiff to

1 cruel and unjust hardships in conscious disregard of the Plaintiff's rights, so as to justify an  
2 award of exemplary and punitive damages.

3 **FIFTH CAUSE OF ACTION:**

4 **FRAUD AND DECEIT:**

5 **PROMISE MADE WITHOUT INTENTION TO PERFORM**

6 52. Plaintiff repeats and re-alleges paragraphs 1-28, inclusive as though fully set  
7 forth herein.

8 53. Defendants and each of them made material promises to WELLTEC HK that  
9 they would honor credit and performance commitments in connection with its dealings with  
10 WELLTEC HK.

11 54. Defendants had no intention of performing their promises at the time they  
12 made them and made these promises to induce WELLTEC HK's reliance thereon for the  
13 purpose of securing commercial goods and products without having to pay for them.

14 55. WELLTEC HK was at all times ignorant of the Defendants' secret intentions  
15 not to perform their promises and could not in the exercise of reasonable diligence have  
16 discovered the secret intentions of the Defendants. Had the WELLTEC HK known the actual  
17 facts, it would not have taken such action. WELLTEC HK's reliance on the Defendants'  
18 representations were therefore justified because the Defendants and each of them held  
19 themselves out to the public and to WELLTEC HK as being competent, experienced sales  
20 agents and representatives with significant financial resources.

21 56. The aforementioned conduct of the Defendants was an intentional  
22 misrepresentation, deceit, or concealment of a material fact known to the Defendants made  
23 with the intention on the part of the Defendants of thereby depriving the WELLTEC HK of  
24 property or legal rights or otherwise causing injury, and was despicable conduct that subjected  
25 the Plaintiffs to cruel and unjust hardships in conscious disregard of the Plaintiff's rights, so as  
26 to justify an award of exemplary and punitive damages.

27 ///

28 ///

1                   SIXTH CAUSE OF ACTION

2                   ACCOUNT STATED

3       57. Plaintiff repeats and re-alleges paragraphs 1-28, inclusive as though fully set  
4 forth herein.

5       58. As stated more fully above, Defendants and each of them promised to pay  
6 \$548,384 to Plaintiff. As such, an account was stated between Plaintiff and Defendants.

7       59. At the time of the statement of account, Defendants and each of them agreed  
8 to pay the amount stated to Plaintiffs, but Defendants have not paid that amount or any part of  
9 it.

10      60. Plaintiff has been damaged and is thereby entitled to a total sum in the  
11 amount of \$548,384 plus interest.

12                   SEVENTH CAUSE OF ACTION

13                   OPEN BOOK ACCOUNT

14      61. Plaintiff repeats and re-alleges paragraphs 1-28, inclusive as though fully set  
15 forth herein.

16      62. Plaintiff and Defendants and each of them had one or more financial  
17 transactions as alleged more fully above.

18      63. Plaintiff kept an open book account of the debits and credits involved in said  
19 financial transactions.

20      64. Defendants and each of them owe Plaintiff money on the account.

21      65. The amount of money that Defendants and each of them owe Plaintiff is in  
22 an amount of \$548,384 or more according to proof at trial.

23                   PRAYER FOR RELIEF

24 WHEREFORE, Plaintiffs pray for judgment on its complaint as follows:

25      (1) Compensatory damages;  
26      (2) General damages according to Proof;  
27      (3) Special damages according to Proof;  
28      (4) Consequential damages;

- (5) Attorney's fees and costs of the suit herein;
- (6) Interest at the legal rate;
- (7) All other relief as the Court may deem just and proper.

HANDAL & ASSOCIATES

Dated: January 25, 2008

By:

Anton Handal, Esq.  
Pamela Chalk, Esq.  
Gabriel G. Hedrick, Esq.

## **EXHIBIT A**

22 Nov. 2008 15:03

No. 7232

## SOLE DISTRIBUTORSHIP AGREEMENT

EFFECTIVE: 1st - August 2002

For the sole distributorship in

To: New Guilt (Rm 223)

Between

Mr. Wilson Wong

WELLTEC MACHINERY LIMITED  
 Tai Tung Industrial Building,  
 29-33 Tsing Yi Road,  
 Tsing Yi Island, N.T.,  
 HONG KONG.

(fax no. 1-614-237-2978)

Hereinafter called Welltec

From May Po, Hong Kong

(total: 8 pages)

And

7/3

Taylor's Industrial Services, LLC  
 HPM Division  
 820 Marion Road  
 Mt. Gilead, Ohio 43338  
 U.S.A.

20/9/04

Hereinafter called TIS-HPM

1. In consideration of the obligation hereafter undertaken by, Welltec hereby appoints TIS-HPM as the distributor for its plastic injection molding machines and corresponding spare parts and accessories (hereinafter called Machines) and TIS-HPM hereby accepts this appointment for the territory of Canada (hereinafter called Territory). As used in this Agreement, Machine refers to the "G-Series" and "F-Series" machines.
2. Welltec will provide and supply, free of charge all commercial and technical literature in English and in electronic form where available, relating to Machines.
3. Welltec will set prices for Machines at the most competitive level and will be entitled to change its prices or discounts giving TIS-HPM at least sixty days prior notice of such changes to enable ongoing quotations to be concluded.
4. TIS-HPM will use its best endeavors and all reasonable and proper skills to promote and sell Machines within the Territory.
5. TIS-HPM shall neither directly nor indirectly be involved with sales and supply of any other new injection molding machines similar to and competitive with those supplied by Welltec except in the case when purchase for subsequent resale of a used machine from a customer is essential to the conclusion of an order for Machines from that customer. As used in this agreement similar or competitive machines refer to other hydraulic powered toggle type machines in the clamp size range up to and including 599 tons.

J.R.  
10-2008J.R. BK  
3/10

6. TIS-HPM, through its sales organization will periodically contact potential customers in the Territory which are prospective users for Machines and will provide Welltec a quarterly update on sales and potential sales.
7. TIS-HPM shall be entitled to purchase Machines from Welltec for resale to any parties within the Territory where installation and operation of such purchased Machines will take place.
8. TIS-HPM shall not quote any prices or sell any Machines to any parties outside its Territory unless approved by Welltec.
9. TIS-HPM shall provide Welltec its latest price information on Machines including price lists, discounts, payment terms etc. whenever available or requested by Welltec.
10. Welltec's standard terms of payment to TIS-HPM for sales within the Territory will be either of the followings:-
  - 100% of order value by irrevocable letter of credit at sight established with order
  - 20% of order value payable with order, rest 80% by irrevocable letter of credit at sight established 4 weeks prior to shipment date.
11. This agreement shall expire on 1 August 2003. Thereafter the agreement will be renewed automatically on a yearly basis unless one party shall give to the other notice for termination by one-month notice.
12. TIS-HPM shall at all times advise Welltec of any parts or designs of Machines that are unlikely to comply with the regulations of Territories and provide to Welltec whenever available the newest versions of such related regulations and technical standards in English or with English translations if possible.
13. Welltec shall at all times design, manufacture and supply its Machines of a good and merchantable quality fit for their respective use and purpose and all guarding and safety features of Machines will comply with the regulations of Territories. TIS-HPM has obligation to update Welltec with the latest regulations of Territories from time to time.
14. Welltec shall provide twelve months of warranty for all Machines sold to Territory which may become defective under normal working conditions or due to manufacturing defects, starting from the date of installation and commissioning of Machines, or 3 months after the shipment arrived any port in the continental United States whichever first occurred.  
The warranty period in total of thirteen (13) months for the ten (10) machines in Ohio and the twelve (12) machines in Illinois, as of the date this agreement is executed, shall begin starting from the date of Machines' arrival at TIS-HPM in Ohio or starting after the execution of this agreement whichever comes last. And the warranty covers hydraulic and mechanical parts only.

20 Nov 2016 15:03

No. 7232

15. Welltec will either replace or repair any parts or components which may fail or become defective during the above mentioned warranty period, and TIS-HPM will be responsible to provide qualified labor to carry out any technical services for such replacement or repair work at its own expense. Welltec will support TIS-HPM with such specialist technical support and advice, as may be required from time to time, on electronic control systems, hydraulics and other equipment, which only Welltec can provide.
16. Any and all liabilities for personal injury shall be the sole responsibility of Welltec for any machine installed in Territory prior to the execution of this agreement, provided that those machines were not undergone any modification by customer itself or TIS-HPM.
17. Any and all liabilities for personnel injury resulting from occurrences on Machines installed in Territory subsequent to the execution of this agreement shall be the sole responsibility of Welltec, provided that the injury is caused by mal-function or machine defects, except where TIS-HPM has modified the Machine. Welltec understands that TIS-HPM plans to modify or add an electrical control system to Machine(s) installed after execution of this agreement. Any and all liabilities for personnel injury from occurrences on Machines resulting from the electrical control system added by TIS-HPM shall be the responsibility of TIS-HPM. Any and all liabilities not resulting from the addition of the electrical control system shall be the responsibility of Welltec.
18. The party responsible for liabilities from personnel injury occurrences, as defined above, shall indemnify, defend and hold harmless the other party. Both Welltec and TIS-HPM shall cooperate to the fullest extent possible in defending, at their own expense, the Machine in any liability action.
19. Welltec undertakes not to appoint any third party as agent, distributor without the consent of TIS-HPM or otherwise, for the purpose of marketing and selling Machines within the Territory.
20. Any dispute or claim arising out of this agreement shall be referred to and finally resolved by the International Chamber of Commerce in accordance with its Conciliation and Arbitration Rules. The venue of such arbitration shall be in Hong Kong.
21. Either party may terminate the agreement with immediate effect if the other party fails to meet its obligations by giving a written notice.
22. No amendment or variation of this agreement shall be effective to bind the parties hereto unless such amendment or variation shall have been put into writing and duly signed on behalf of both parties hereto.
23. Welltec shall provide to TIS-HPM the following information and documentation before or at the time of delivery of the Machines: (1) Assembly drawings; (2) Subassembly drawings; (3) Parts Lists; (4) Service Manuals, Parts Manuals, Operating Manuals; (5) Electrical and Hydraulic Schematics.

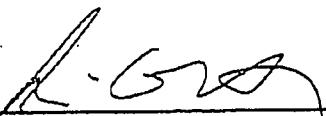
21  
10-2-0K. J. B.  
3/10

12/12/2016 15:03

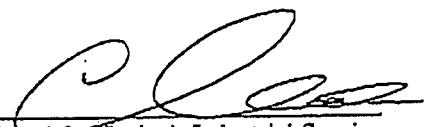
No. 7221 3.7

24. Welltec and TIS-HPM shall work together to identify parts ("Spare Parts") which they believe will be required to support the Machines and Welltec shall provide those parts to TIS-HPM on consignment until those Spare Parts are sold.

AS WITNESSED the signatures of the parties

  
Signed for Welltec Machinery Ltd.

Date : 17 AUG 2002

  
Signed for Taylor's Industrial Services,

LLC HPM Division

Date : 17-02

\*\* Supplement Attached \*\*

310-2-4

JL  
BL  
3/6

12 Nov. 2016 13:03

No. 7232 2.3

Supplement to Sole Distributorship Agreement between Welltec & TIS-HPM

AA) For item 12

Should there be any changes in regulations and standard which leads to the modifications in machines features, the prices of machine shall be adjusted accordingly. Surely, the new prices have to be agreed by both parties.

BB) For item 14

For the twenty-two (22) sets machine, upon your confirmation of order and receipt of machines, we will issue a certificate to list down all details, such as the serial numbers and the warranty period of them to confirm the warranty term that Welltec to these machines.

CC) For item 15

For the claim cases of warranty parts, a service report on describing the problem details will be required for our study. And the defective parts shall be returned to us upon request for analysis purpose.

J. H. 10/02

J. H. 3/10

22 Nov. 2014 15:03

No. 7232 3.9

Supplement #2 to Sole Distributorship Agreement between Welltec & TIS-HPM

DD) For item 7

Machines purchased by TIS-HPM may be resold to any parties within the territory under  
TIS-HPM's own trade name.

10/20

10/20



**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**  
TAYLOR'S INDUSTRIAL SERVICES, LLC  
a/k/a HPM DIVISION, and DOES 1 through 100.

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
WELLTEC MACHINERY USA, INC., a California Corporation as  
assignee of WELLTEC MACHINERY LIMITED a Hong Kong  
registered Company.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

2008 LNU 28 4110:04

RECEIVED  
CLERK'S OFFICE

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of San Diego, Central District  
330 W. Broadway Avenue  
San Diego, CA 92101

CASE NUMBER: 08-00076792-CU-BC-CTL  
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Gabriel G. Hedrick, Esq. (SBN #220649)

Handal & Associates, 1200 Third Avenue, Suite 1321, San Diego, CA 92101 **M. McKinley**

DATE: **JAN 28 2008** Clerk, by \_\_\_\_\_ Deputy \_\_\_\_\_  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
	<input type="checkbox"/> other (specify):	

4.  by personal delivery on (date):

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6146	
PLAINTIFF(S) / PETITIONER(S): Welltec Machinery USA Inc as assignee of Welltec Machinery Limited	
DEFENDANT(S) / RESPONDENT(S): Taylor's Industrial Services LLC	
WELLTEC MACHINERY USA INC AS ASSIGNEE OF WELLTEC MACHINERY LIMITED VS. TAYLOR'S	
<b>NOTICE OF CASE ASSIGNMENT</b>	<b>CASE NUMBER:</b> 37-2008-00076792-CU-BC-CTL

Judge: Jeffrey B. Barton

Department: C-69

COMPLAINT/PETITION FILED: 01/28/2008

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

---

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>		<b>FOR COURT USE ONLY</b>
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS: 330 West Broadway		
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827		
BRANCH NAME: Central		
PLAINTIFF(S): Welltec Machinery USA Inc as assignee of Welltec Machinery Limited		
DEFENDANT(S): Taylor's Industrial Services LLC		
SHORT TITLE: WELLTEC MACHINERY USA INC AS ASSIGNEE OF WELLTEC MACHINERY LIMITED VS. TAYLOR'S INDUSTRIAL SERVICES LLC		
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)</b>		CASE NUMBER: 37-2008-00076792-CU-BC-CTL

Judge: Jeffrey B. Barton

Department: C-69

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

<input type="checkbox"/> Court-Referred Mediation Program	<input type="checkbox"/> Court-Ordered Nonbinding Arbitration
<input type="checkbox"/> Private Neutral Evaluation	<input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated)
<input type="checkbox"/> Private Mini-Trial	<input type="checkbox"/> Private Reference to General Referee
<input type="checkbox"/> Private Summary Jury Trial	<input type="checkbox"/> Private Reference to Judge
<input type="checkbox"/> Private Settlement Conference with Private Neutral	<input type="checkbox"/> Private Binding Arbitration
<input type="checkbox"/> Other (specify): _____	

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Alternate: (mediation & arbitration only) \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff \_\_\_\_\_

Name of Defendant \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name of Plaintiff's Attorney \_\_\_\_\_

Name of Defendant's Attorney \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

**IT IS SO ORDERED.**

Dated: 01/28/2008

JUDGE OF THE SUPERIOR COURT

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00076792-CU-BC-CTL      CASE TITLE: Welltec Machinery USA Inc as assignee of Welltec Machinery

### NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

#### ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

#### ADR OPTIONS

**1) CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

**Assignment to Mediation, Cost and Timelines:** Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

**2) JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

**Assignment to Arbitration, Cost and Timelines:** Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

**3) SETTLEMENT CONFERENCES:** The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

**4) OTHER VOLUNTARY ADR:** Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

**ADDITIONAL ADR INFORMATION:** For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gabriel G. Hedrick, Esq. 220649 Handal & Associates 1200 Third Avenue, Suite 1321, San Diego, CA 92101 TELEPHONE NO.: 619-544-6400 FAX NO.: 619-696-0323		FOR COURT USE ONLY 10:02 CA
ATTORNEY FOR (Name): Plaintiff		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central District-Unlimited Civil		
CASE NAME: Welltec Machinery USA, Inc.; et al. v. Taylor's Industrial Services, LLC; et al.		CASE NUMBER: 37-2008-00076792-CU-BC-CTL
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000)      (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		JUDGE: DEPT:

*Items 1–6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)  Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)  Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)  Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)  Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)  Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)  Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)  Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)  Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)  Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): 7

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 1/25/08

Gabriel G. Hedrick, Esq. SBN 220649

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

JS 44  
(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

**CIVIL COVER SHEET****I. (a) PLAINTIFFS**

WELLTEC MACHINERY USA, INC., a California corporation as assignee of WELLTEC MACHINERY LIMITED a Hong Kong registered Company

**DEFENDANTS**

TAYLOR'S INDUSTRIAL SERVICES, LLC d/b/a HPM DIVISION, and DOES 1 through 100

FILED

08 MAY 16 PM 2:34

U8 CV 08-17 BEN LSP  
SOUTHERN DISTRICT COURT(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Tanya M. Schierling (SBN 206984)  
Solomon Ward Seidenwurm & Smith, LLP  
401 B Street, Suite 1200  
San Diego, CA 92101  
(619) 231-0303

## ATTORNEYS (IF KNOWN)

**II. BASIS OF JURISDICTION** (PLACE AN 'X' IN ONE BOX ONLY)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF	PT	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**IV. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) 28 USC Section 1331; 9 USC Section 205 and 28 USC Section 1441 (Federal Question)

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 410
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 450
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 460
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 470
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 810
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/> 850
<input type="checkbox"/> 180 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 395 Property Damage Product Liability	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 875
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other	<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 891
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 892
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence	<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 894
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 515 HABEAS CORPUS:	<input type="checkbox"/> 895 Freedom of Information Act	<input type="checkbox"/> 895
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 900
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 950
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 880 Other Statutory Actions	<input type="checkbox"/> 880
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Conditions		
(PLACE AN "X" IN ONE BOX ONLY)				
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removal from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)
				<input type="checkbox"/> 6 Multidistrict Litigation
				<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

**VI. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removal from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
--	--	--	---	--	---	--

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION DEMAND \$  
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:  
JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S)** (See instructions):

IF ANY

JUDGE

Docket Number

DATE

May 16, 2008

SIGNATURE OF ATTORNEY OF RECORD

EDWARD J. MCINTYRE

151014 \$350 - JD OS 16/08  
ODMA\PCDOCS\WORDPERFECT\2816\1 January 28, 2008 (3:10pm)

UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 151014 - MB

May 16, 2008  
14:31:27

Civ Fil Non-Pris  
USAO #: 08CV0877 CIVIL FILING  
Judge.: ROGER T BENITEZ \$350.00 CK  
Amount.:  
Check#: BC518

Total-> \$350.00

FROM: WELLTEC MACHINERY USA, INC  
VS TAYLORS INDUSTRIAL  
SERVICES, ET AL